U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 14 2013 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The regulation at 8 C.F.R. § 103.3(a)(2) provides, in pertinent part:

> (v) *Improperly filed appeal—*
>
> (A) *Appeal filed by person or entity not entitled to file it—*
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> (1) *Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.
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> (2) *Appeal by attorney or representative without proper Form G–28—*
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> (i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G–28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.
>
> (ii) *When favorable action warranted. . . .*
>
> (iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G–28 directly to the [AAO]. The official shall also forward the appeal and the relating record of proceeding to the [AAO].

> The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G–28 entitling that person to file the appeal.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

> *Filing.* (1) *Preparation and submission.* Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . such instructions are incorporated into the regulations requiring its submission.

The instructions for the Form I-290B, Notice of Appeal or Motion, advise the appellant that:

> If you wish, you may be represented at no expense to the U.S. Government by an attorney or other duly authorized representative. Your attorney or representative must submit a Form G-28 with the appeal or motion. If the appeal or motion is filed without a properly executed Form G-28, it will be dismissed or rejected.

Additionally, the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form G-28, provides that:

> An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. *This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS* [emphasis added].

Finally, the regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. Form I-290B is signed by [redacted]. However, [redacted] did not submit a new Form G-28 with the appeal authorizing him to act on behalf of the petitioner. Instead, [redacted] submitted a copy of a previously submitted Form G-28 dated March 8, 2012, prior to the filing of the appeal.

On December 11, 2012, the director requested to submit a new and duly executed Form G-28 in accordance with the regulation at 8 C.F.R. § 292.4(a) and the instructions for Form I-290B and Form G-28. The request specifically advised to submit the new Form G-28 directly to the AAO. As of this date, more than two months later, has failed to submit Form G-28 to the AAO as requested by the director.

As has failed to provide a new Form G-28 authorizing him to act on behalf of the petitioner in the appellate stage of this proceeding, he cannot be considered as the petitioner's legal representative. Accordingly, the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and must be rejected.

In the alternative, the appeal will be summarily dismissed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

In Part 2 of Form I-290B, checked the box indicating that no brief and/or evidence would be submitted in support of the appeal. In addition, submitted a November 19, 2012 letter stating: "NO BRIEF TO BE SUBMITTED." Part 3 of Form I-290B includes a space for the petitioner to "[p]rovide a statement explaining any erroneous conclusion of law or fact in the decision being appealed." states: "This decision constitutes an abuse of discretion as it was not based on the proper *NYSDOT* standard and did not properly consider all evidence submitted." statement fails to identify any erroneous conclusion of law or fact in the director's decision. does not specifically challenge any of the director's findings or point to specific errors in the director's analyses of the documentary evidence. Further, does not identify the specific evidence that the director did not properly consider. In addition, does not explain how the specific documentation that the petitioner submitted supports a finding of eligibility. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009).

In this matter, the petitioner has not identified as a proper basis for the appeal an erroneous conclusion of law or a statement of fact in the director's decision.

Therefore, if not rejected, the appeal would be summarily dismissed.

ORDER: The appeal is rejected.